

August 13, 2009

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-1278

In Regard to the Matter of:

Bayside State Prison
Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

ROBERT CARMINE MELONI

-vs-

WILLIAM H. FAUVER, et al,
Defendants.

* * * *

THURSDAY, AUGUST 13, 2009

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

August 13, 2009

Page 2

1
2
3
4 Transcript of proceedings in the above
5 matter taken by Theresa O. Mastroianni, Certified
6 Court Reporter, license number 30X100085700, and
7 Notary Public of the State of New Jersey at the
8 United States District Court House, One Gerry Plaza,
9 Camden, New Jersey, 08102, commencing at 2:55 PM.
10
11
12
13
14
15
16
17

18 MASTROIANNI & FORMAROLI, INC.
19 Certified Court Reporting & Videoconferencing
20 251 South White Horse Pike
21 Audubon, New Jersey 08106
22 856-546-1100
23
24
25

August 13, 2009

Page 3

A P P E A R A N C E S:

LOUGHRY & LINDSAY, ESQUIRES
BY: JUSTIN T. LOUGHRY, ESQUIRE
330 MARKET STREET
CAMDEN, NEW JERSEY 08102
856-968-9201
ATTORNEYS FOR THE PLAINTIFFS

ROSELLI & GRIEGEL, PC
BY: STEVEN GRIEGEL, ESQUIRE
- and -
BY: KENNETH W. LOZIER, ESQUIRE
1337 STATE HIGHWAY 33
HAMILTON SQUARE, NEW JERSEY 08690
609-586-2257
ATTORNEYS FOR THE DEFENDANTS

August 13, 2009

Page 4

1 JUDGE BISSELL: I'm reopening
2 proceedings in the matter of Robert Meloni, docket
3 number 08-1278.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Meloni.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Mr. Meloni testified at some length to
18 an event which supposedly happened to him while being
19 extracted from the Farm where he was residing in one
20 of the barracks. Among other places that testimony
21 is presented at some length at pages 15 through 21 of
22 the transcript of March 11, 2009.

23 I will review the testimony as follows:
24 He testified that on this occasion there was noise
25 taking place in the barracks, among other things,

August 13, 2009

Page 5

1 baiting of Corrections Officer Crowe who was in
2 charge of those barracks behind his back, although
3 within his hearing, and that at one point Officer
4 Crowe had enough of it. For some reason or other,
5 Crowe singled out Mr. Meloni for no reason because
6 there had been others that were disruptive rather
7 than he. But he nevertheless did so and Mr. Meloni's
8 further testimony was that the next thing he knew the
9 cops came, persons in the riot gear, pulled him off
10 of his bunk, that he was beaten in various ways as
11 described in that testimony, both on the way to and
12 at Farm Center where this particular unit delivered
13 him, that after that he was herded onto the bus that
14 was going up to the main compound where he was
15 delivered into B Unit. He states that this was a
16 second group of officers that took him up there and
17 that his head was smashed into a door in order to
18 open it and that he was thrown down steps and
19 subjected to further beatings.

20 In the concluding portions of these
21 events as he described them, we find the following
22 description beginning at line 13 on page 19 of the
23 transcript, referring to events that are happening to
24 him in B Unit.

25 "Answer: As that is happening, he's

August 13, 2009

Page 6

1 shouting obscenities at me and I got this other
2 officer kneeling me -- as that is happening, I have an
3 officer on the right kneeling me in these ribs and I'm
4 not going to be able to take that. Then he starts
5 yelling at me. And the next thing you know he comes
6 down with a fist and breaks my nose. My nose just
7 splats. I heard it crack. It's still broke. Now I
8 have blood coming out. Now I'm on the ground, on the
9 floor in the cell. I can't breathe, I can't move. I
10 couldn't get up to go to the bathroom for a couple
11 days. And then they unhandcuffed, unshackled me, and
12 left. It frightened me. That was the beginning
13 right there.

14 "Question: What happened to you next?

15 "Answer: Next, you know, I laid on the
16 floor bleeding. And I was asking for medical
17 attention. I didn't get no medical attention. I got
18 threatened. For the next couple days I heard people
19 getting beaten, blood -- this is in front of my cell
20 because I was on the floor. And somebody was getting
21 beaten right outside my cell and I seen the blood
22 coming up under my floor. I said something, they
23 opened the door and asked me if I wanted another
24 beating. I couldn't handle another beating. I was
25 so scared that I wished they would kill me, this way

August 13, 2009

Page 7

1 I wouldn't feel the pain no more. That's how scared
2 I was. I didn't want to get beat any more. I
3 thought I was going to die as it was."

4 And that concludes at page 20 line 17.

5 I find frankly, however, that that is
6 not what happened. Officer Crowe testified before us
7 here and I found his testimony in that respect
8 considerably more credible. He stated that Mr.
9 Meloni was leaving his bed area in the barracks
10 wandering around throughout the barracks swatting
11 flies, that he disobeyed both warnings and orders to
12 cease and to return to his bunk area. I find that
13 there certainly was a legitimate purpose for keeping
14 the inmates in this open barracks in the immediate
15 vicinity of their bunks during a lockdown procedure
16 in order to be able to enforce this lockdown and the
17 necessary supervision of the prisoners to the fullest
18 extent possible given these open barracks.

19 I find that Officer Crowe as a result
20 of this called Center for assistance and that Center
21 dispatched the Bayside officers assigned to compound
22 patrol, to wit the Farm, to remove Mr. Meloni to Farm
23 Center.

24 I find that they did so without
25 incident as testified to by Officer Hughes and as

August 13, 2009

Page 8

1 reflected in his contemporaneous report, D-634.

2 In the course of this removal and in
3 all likelihood shortly thereafter when he was able to
4 return to his other administrative duties, Officer
5 Crowe executed the disciplinary charges of D-632 and
6 633 to reflect the two charges: One for conduct
7 which disrupts or interferes with the orderly running
8 of an institution, namely the activities that Mr.
9 Meloni was engaged in away from his bunk area, and,
10 two, for refusing to obey an order of Officer Crowe
11 that he cease and desist from doing that and remain
12 in his bunk area. Those exhibits are in evidence and
13 their contents are self-explanatory. I find that
14 they are both accurate and credible.

15 At the Center, Mr. Meloni was handed
16 off to the Bayside Prisoner Response Team. He
17 characterized these people as being SOG officers, but
18 they were not, even though that confusion is well
19 understood because they also were dressed in riot
20 gear in a position to appear as if they were SOG
21 officers.

22 I do want to make one modification. I
23 don't know if the record is clear here as to whether
24 the compound patrol which took him from the barracks
25 to Farm Center was dressed in riot gear or not. I

August 13, 2009

Page 9

1 don't believe it's significant, I just didn't want to
2 make a finding that wasn't supported in the record.
3 But in any event, the Bayside Prisoner Response Team,
4 as was customary, were in that riot gear.

5 This, of course, occurred on the third
6 of August of '97 and by 8:15 PM they had arrived at B
7 Unit. Sergeant Plummer on duty in B Unit made note
8 of the fact that Mr. Meloni was logged in from the
9 Farm at that time. That appears in Exhibit D-199 and
10 also in a separate log indicating that he came in
11 from the Farm, D-469.

12 Officer Plummer described the standard
13 operating procedure for intake at B Unit when he was
14 the housing officer on that occasion. He testified
15 that there was no incident like that which Mr. Meloni
16 described and had never been confronted with an
17 incident such as that there. He did acknowledge that
18 he was not in the cell areas as a normal part of his
19 duties, but the thought or the prospect that somehow
20 or other Mr. Meloni could lie naked, defecating in
21 his cell for the better part of two days with no
22 attention to him whatsoever was just not inherently
23 credible and something that surely the Bayside
24 officers would have noticed and dealt with, even if
25 it had been the case at the outset.

August 13, 2009

Page 10

1 Officer Plummer also testified (and I
2 think tellingly for my purposes) that prisoners, upon
3 being brought to B Unit from elsewhere, were
4 strip-searched on entry into B Unit in an area close
5 to that entering or common area and then were
6 reclothed before going to the cells. Certainly this
7 makes a great deal more inherent sense.

8 What I find here is, frankly, that Mr.
9 Meloni fabricated these events. There was too much
10 competent evidence to the contrary particularly
11 regarding the charges written up and acted upon and
12 also the procedures for handling prisoners throughout
13 this journey that just does not support Mr. Meloni's
14 view.

15 While I'm no psychologist, I think I
16 can draw the appropriate inference that Mr. Meloni
17 was angered at being taken out of these barracks
18 where living circumstances were really fairly
19 relaxed, perhaps angered that he was taken out for a
20 trivial event, rather than something more serious,
21 and put basically in the hole, that is, B Unit, and
22 had disciplinary charges lodged against him. And as
23 a result of that anger and resentment has lashed back
24 with this fabricated story.

25 Finally, although not every item of

August 13, 2009

Page 11

1 evidence has been discussed in this opinion/report,
2 all evidence presented to the Special Master was
3 reviewed and considered. For the reasons set forth
4 above, I recommend in this report that the district
5 court enter an order and judgment of no cause for
6 action with regard to Robert Meloni.

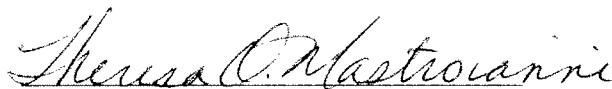
August 13, 2009

Page 12

C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



Theresa O. Mastroianni, C.S.R.
Notary Public, State of New Jersey
My Commission Expires May 5, 2010
Certificate No. XI0857
Date: September 14, 2009

August 13, 2009

13

A	back 5:2 10:23 baiting 5:1 barracks 4:20 4:25 5:2 7:9,10 7:14,18 8:24 10:17 based 4:9 basically 10:21 bathroom 6:10 Bayside 1:5 7:21 8:16 9:3,23 beat 7:2 beaten 5:10 6:19 6:21 beating 6:24,24 beatings 5:19 bed 7:9 beginning 5:22 6:12 believe 9:1 better 9:21 BISSELL 1:20 4:1 bleeding 6:16 blood 6:8,19,21 breaks 6:6 breathe 6:9 broke 6:7 brought 10:3 bunk 5:10 7:12 8:9,12 bunks 7:15 bus 5:13	7:20,23 8:15 8:25 certainly 7:13 10:6 Certificate 12:21 Certified 2:5,19 12:4 certify 12:5,9 characterized 8:17 charge 5:2 charges 4:10 8:5 8:6 10:11,22 circumstances 10:18 Civil 1:2 4:14 clear 8:23 close 10:4 comes 6:5 coming 6:8,22 commencing 2:9 Commission 12:20 common 10:5 competent 10:10 compound 5:14 7:21 8:24 concludes 7:4 concluding 5:20 conduct 8:6 confronted 9:16 confusion 8:18 considerably 7:8 considered 11:3 constitute 4:14 contemporane... 8:1 contents 8:13 contrary 10:10 cops 5:9 Corrections 5:1 counsel 12:10,12 couple 6:10,18 course 8:2 9:5 court 1:1 2:6,8	2:19 11:5 crack 6:7 credible 7:8 8:14 9:23 Crowe 5:1,4,5 7:6,19 8:5,10 customary 9:4 C.S.R 12:19	D-634 8:1
able 6:4 7:16 8:3 accurate 8:14 12:6 acknowledge 9:17 acted 10:11 action 1:2 11:6 12:11,14 activities 8:8 administrative 8:4 Agreement 4:7 al 1:9 allegations 4:11 anger 10:23 angered 10:17 10:19 Answer 5:25 6:15 appear 8:20 appears 9:9 applicable 4:11 applied 4:8 appropriate 10:16 area 7:9,12 8:9 8:12 10:4,5 areas 9:18 arrived 9:6 asked 6:23 asking 6:16 assigned 7:21 assistance 7:20 attention 6:17 6:17 9:22 attorney 12:10 12:12 ATTORNEYS 3:6,12 Audubon 2:21 August 1:15 9:6	C C 3:2 12:1,1 called 7:20 Camden 2:9 3:5 CARMINE 1:7 case 9:25 cause 11:5 cease 7:12 8:11 cell 6:9,19,21 9:18,21 cells 10:6 Center 5:12 7:20	D date 12:8,21 days 6:11,18 9:21 deal 10:7 dealt 9:24 decision 4:8 defecating 9:20 Defendants 1:10 3:12 delivered 5:12 5:15 described 5:11 5:21 9:12,16 description 5:22 desist 8:11 die 7:3 directives 4:5 disciplinary 8:5 10:22 discussed 11:1 disobeyed 7:11 dispatched 7:21 disruptive 5:6 disrupts 8:7 district 1:1,2 2:8 11:4 docket 4:2 doing 8:11 door 5:17 6:23 draw 10:16 dressed 8:19,25 duties 8:4 9:19 duty 9:7 D-199 9:9 D-469 9:11 D-632 8:5	E E 3:2,2 12:1,1 employee 12:10 12:12 enforce 7:16 engaged 8:9 enter 11:5 entering 10:5 entry 10:4 ESQUIRE 3:4,9 3:10 ESQUIRES 3:4 et 1:9 event 4:18 9:3 10:20 events 5:21,23 10:9 evidence 8:12 10:10 11:1,2 executed 8:5 Exhibit 9:9 exhibits 8:12 Expires 12:20 extent 4:11 7:18 extracted 4:19	
B B 5:15,24 9:6,7 9:13 10:3,4,21			F F 12:1 fabricated 10:9 10:24 fact 9:8 facts 4:8 fairly 10:18 Farm 4:19 5:12 7:22,22 8:25 9:9,11 FAUVER 1:9 feel 7:1 finalized 4:13 Finally 10:25 financially 12:13 find 5:21 7:5,12 7:19,24 8:13	

August 13, 2009

14

10:8 finding 9:2 fist 6:6 flies 7:11 floor 6:9,16,20 6:22 following 5:21 follows 4:23 foregoing 12:5 FORMAROLI 2:18 forth 4:9 11:3 12:8 found 7:7 frankly 7:5 10:8 frightened 6:12 front 6:19 fullest 7:17 further 5:8,19 12:9	5:25 6:2 head 5:17 heard 6:7,18 hearing 5:3 herded 5:13 hereinbefore 12:8 HIGHWAY 3:10 hole 10:21 HONORABLE 1:20 Horse 2:20 House 2:8 housing 9:14 Hughes 7:25	K keeping 7:13 KENNETH 3:10 kill 6:25 kneeing 6:2,3 knew 5:8 know 6:5,15 8:23	Mejias 4:10 Meloni 1:7 4:2 4:12,17 5:5 7:9 7:22 8:9,15 9:8 9:15,20 10:9 10:16 11:6 Meloni's 5:7 10:13 modification 8:22 move 6:9	opened 6:23 operating 9:13 opinion/report 1:5 4:4 11:1 order 4:5,16 5:17 7:16 8:10 11:5 orderly 8:7 orders 7:11 outset 9:25 outside 6:21
G gear 5:9 8:20,25 9:4 Gerry 2:8 getting 6:19,20 given 7:18 go 6:10 going 5:14 6:4 7:3 10:6 great 10:7 GRIEGEL 3:8,9 ground 6:8 group 5:16 guiding 4:7	I immediate 7:14 incident 7:25 9:15,17 indicating 9:10 inference 10:16 inherent 10:7 inherently 9:22 inmates 7:14 institution 8:8 instructions 4:10 intake 9:13 interested 12:13 interferes 8:7 issued 4:4 item 10:25	L laid 6:15 lashed 10:23 law 4:7 leaving 7:9 left 6:12 legitimate 7:13 length 4:17,21 license 2:6 lie 9:20 likelihood 8:3 LINDSAY 3:4 line 5:22 7:4 Litigation 1:6 living 10:18 Local 4:13 lockdown 7:15 7:16 lodged 10:22 log 9:10 logged 9:8 LOUGHRY 3:4 3:4 LOZIER 3:10	N N 3:2 naked 9:20 necessary 7:17 neither 12:9,11 never 9:16 nevertheless 5:7 New 1:2 2:7,9,21 3:5,11 12:4,20 noise 4:24 normal 9:18 nose 6:6,6 Notary 2:7 12:3 12:20 note 9:7 noticed 9:24 number 2:6 4:3	P P 3:2,2 page 5:22 7:4 pages 4:21 pain 7:1 paragraph 4:15 part 9:18,21 particular 5:12 particularly 10:10 parties 12:11 patrol 7:22 8:24 PC 3:8 people 6:18 8:17 persons 5:9 Pike 2:20 place 4:25 12:8 places 4:20 PLAINTIFFS 3:6 Plaza 2:8 Plummer 9:7,12 10:1 PM 2:9 9:6 point 5:3 portions 5:20 position 8:20 possible 7:18 presented 4:21 11:2 principles 4:7 Prison 1:5 Prisoner 8:16 9:3
H H 1:9 HAMILTON 3:11 handed 8:15 handle 6:24 handling 10:12 happened 4:18 6:14 7:6 happening 5:23	J Jersey 1:2 2:7,9 2:21 3:5,11 12:5,20 JOHN 1:20 journey 10:13 JUDGE 4:1 judgment 11:5 jury 4:9,10 JUSTIN 3:4	M main 5:14 March 4:22 MARKET 3:5 Master 1:6,20 4:6,16 11:2 Master's 4:6 Mastroianni 2:5 2:18 12:3,19 matter 1:4 2:5 4:2 medical 6:16,17	O O 2:5 12:3,19 obey 8:10 obscenities 6:1 occasion 4:24 9:14 occurred 9:5 officer 5:1,3 6:2 6:3 7:6,19,25 8:4,10 9:12,14 10:1 officers 5:16 7:21 8:17,21 9:24 open 5:18 7:14 7:18	

<p>prisoners 7:17 10:2,12 procedure 7:15 9:13 procedures 10:12 proceedings 2:4 4:2 prospect 9:19 psychologist 10:15 Public 2:7 12:3 12:20 pulled 5:9 purpose 7:13 purposes 10:2 pursuant 4:5 put 10:21</p> <hr/> <p>Q</p> <p>Question 6:14</p> <hr/> <p>R</p> <p>R 3:2 12:1 really 10:18 reason 5:4,5 reasons 11:3 reclothed 10:6 recommend 11:4 record 8:23 9:2 Reference 4:5 4:16 referring 5:23 reflect 8:6 reflected 8:1 refusing 8:10 regard 1:4 11:6 regarding 10:11 relative 12:10,12 relaxed 10:19 remain 8:11 removal 8:2 remove 7:22 reopening 4:1 report 4:15 8:1</p>	<p>11:4 Reporter 2:6 12:4 Reporting 2:19 required 4:15 resentment 10:23 residing 4:19 respect 7:7 Response 8:16 9:3 result 7:19 10:23 return 7:12 8:4 review 4:13,23 reviewed 11:3 ribs 6:3 right 6:3,13,21 riot 5:9 8:19,25 9:4 Robert 1:7 4:2 11:6 ROSELLI 3:8 Rule 4:14 running 8:7</p> <hr/> <p>S</p> <p>S 3:2 scared 6:25 7:1 second 5:16 seen 6:21 self-explanatory 8:13 sense 10:7 separate 9:10 September 12:21 Sergeant 9:7 serious 10:20 set 4:9 11:3 12:8 seven 4:15 Shorthand 12:4 shortly 8:3 shouting 6:1 significant 9:1 singled 5:5 smashed 5:17</p>	<p>SOG 8:17,20 somebody 6:20 South 2:20 Special 1:6,20 4:6,6,16 11:2 splats 6:7 SQUARE 3:11 standard 9:12 starts 6:4 State 1:5 2:7 3:10 12:4,20 stated 7:8 states 1:1 2:8 5:15 stenographica... 12:7 steps 5:18 STEVEN 3:9 story 10:24 STREET 3:5 strip-searched 10:4 subjected 5:19 supervision 7:17 support 10:13 supported 9:2 supposedly 4:18 surely 9:23 swatting 7:10</p> <hr/> <p>T</p> <p>T 3:4 12:1,1 take 6:4 taken 2:5 10:17 10:19 12:7 Team 8:16 9:3 tellingly 10:2 testified 4:17,24 7:6,25 9:14 10:1 testimony 4:20 4:23 5:8,11 7:7 12:6 Theresa 2:5 12:3 12:19 thing 5:8 6:5</p>	<p>things 4:25 think 10:2,15 third 9:5 thought 7:3 9:19 threatened 6:18 thrown 5:18 THURSDAY 1:15 time 9:9 12:7 transcript 2:4 4:14,22 5:23 12:6 trivial 10:20 true 12:6 two 8:6,10 9:21</p> <hr/> <p>U</p> <p>underlie 4:8 understood 8:19 unhandcuffed 6:11 unit 5:12,15,24 9:7,7,13 10:3,4 10:21 United 1:1 2:8 unshackled 6:11</p> <hr/> <p>V</p> <p>various 5:10 vicinity 7:15 Videoconfere... 2:19 view 10:14 vs 1:8</p> <hr/> <p>W</p> <p>W 1:20 3:10 Walker 4:10 wandering 7:10 want 7:2 8:22 9:1 wanted 6:23 warnings 7:11 wasn't 9:2 way 5:11 6:25 ways 5:10</p>	<p>whatsoever 9:22 White 2:20 WILLIAM 1:9 wished 6:25 wit 7:22 wouldn't 7:1 written 4:15 10:11</p> <hr/> <p>X</p> <p>XIO857 12:21</p> <hr/> <p>Y</p> <p>yelling 6:5</p> <hr/> <p>0</p> <p>08-1278 1:2 4:3 08102 2:9 3:5 08106 2:21 08690 3:11</p> <hr/> <p>1</p> <p>11 4:22 13 1:15 5:22 1337 3:10 14 12:21 15 4:21 17 7:4 19 5:22</p> <hr/> <p>2</p> <p>2:55 2:9 20 7:4 2009 1:15 4:22 12:21 2010 12:20 21 4:21 251 2:20</p> <hr/> <p>3</p> <p>30X100085700 2:6 33 3:10 330 3:5</p> <hr/> <p>5</p> <p>5 12:20</p>
--	---	--	---	---

August 13, 2009

16

52.1 4:14				
6				
609-586-2257				
3:11				
633 8:6				
8				
8:15 9:6				
856-546-1100				
2:22				
856-968-9201				
3:6				
9				
97 9:6				